

## **REMARKS**

For the Examiner's convenience and reference, Applicants' remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

## **STATUS OF THE CLAIMS**

Claims 1-30 are currently pending in the case. Claims 1-30 stand rejected. In this Response, Applicants have amended claims 1, 4-8, 10-11, 18-20, 23-27, and 29-30. No new claims have been added. No new matter has been added.

## **RESPONSE TO CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-4, 7, 10, 13, 20-22, 26, and 29-30 stand rejected under 35 U.S.C. § 103(a) ("Section 103") as being unpatentable over U.S. Patent Application Pub. No. 2004/0044997 to Talati ("Talati") in view of U.S. Patent No. 6,658,659 to Hiller ("Hiller"). Claims 5-6, 8-9, 11-12, 23-25, and 27-28 stand rejected under Section 103 as being unpatentable over Talati in view of Hiller, and further in view of U.S. Pat. No. 6,986,132 to Schwabe ("Schwabe"). Finally,

claims 14-19 stand rejected under Section 103 as being unpatentable over Talati in view of Schwabe, and further in view of Hiller.

To establish a prima facie case of obviousness under Section 103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 706.02(j).

Applicants submit that the present claims, as amended, are not obvious in view of the prior art references because no reference, alone or in combination, discloses each of the limitations recited in the claims. Claim 1, for example, recites a “logic module configured to identify incompatibilities between the old code image and the new code image; [and] a bootstrap module, within the new code image, configured to reconcile the incompatibilities.” As discussed in the specification, these limitations are important because “conventional bootstrap code executed in the old code image fails to reconcile incompatibilities between the old code image and the new code image,” largely due to the fact that such “incompatibilities were by definition unknown at the time the old code image was written.” See ¶¶ 0061, 0058.

The present invention remedies this situation by first identifying incompatibilities between the old code image and the new code image, and then by executing bootstrap code of the new code image to reconcile the incompatibilities. See ¶¶ 0040, 0014. Depending on the incompatibilities identified, the bootstrap module may “chang[e] the order of initialization for storage registers, memory or hardware devices . . . conver[t] the format of a data structure in

order for the new code image to use the data structure,” or perform other reconciliation operations. See ¶ 0043.

Hiller, on the other hand, neither teaches nor suggests actively reconciling incompatibilities between otherwise incompatible software, as presently claimed. Rather, Hiller teaches that specific compatibility information may be included in loading software and “used to *determine whether it should be selected or passed over* for another version of the same software. In this manner, a ‘version aware’ loader ensures that loaded software modules are compatible with one another and will therefore execute properly.” See Hiller Abstract (emphasis added).

Specifically, the version aware loader of Hiller checks for and responds to backward incompatibility by identifying a version of software that “satisfies both the dependency criteria and the backward compatibility expression.” See Hiller, col. 12, ln. 56-57. If a version fails to satisfy the backward incompatibility expression, it will simply be rejected, and the search for a compatible version may continue. See Hiller, col. 12, ln. 59-62.

Because Hiller only identifies software incompatibilities to avoid loading incompatible software versions, and does not teach or suggest a bootstrap module to actively reconcile incompatibilities between otherwise incompatible software, Hiller fails to render obvious the present invention. Likewise, neither Talati nor Schwabe disclose or suggest a bootstrap module to reconcile incompatibilities between old and new code images, as presently claimed. Accordingly, Applicants submit that claim 1, as amended, is not rendered obvious in view of the prior art of record.

Applicants further submit that independent claims 10, 13, 20, 29, and 30 are also allowable over the art of record for at least the reasons provided above with respect to claim 1.

Furthermore, dependent claims 2-9, 11-12, 14-19, and 21-28 are allowable at least due to their direct or indirect dependency from independent claims 1, 10, 13, and 20.

### **CONCLUSION**

Applicants submit that the amendments to claims 1-30 overcome the Examiner's rejections and put the claims in condition for allowance. In the event the Examiner finds any remaining impediment to the prompt allowance of any of these claims, which could be clarified in a telephone conference, the Examiner is respectfully urged to initiate the same with the undersigned.

Respectfully submitted,

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